

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1404 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

THE AMC

Versus

THE CENTRE FOR ENTREPRENEURSHIP DEVELOPMENT

Appearance:

1. Civil Revision Application No. 1404 of 1994
MR BAIJU BHAGAT for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/10/2003

ORAL JUDGEMENT

Heard Ld. advocate Mr. Baiju Bhagat for the petitioner. Responent served.

This revision application has arisen from curious circumstances that ld. Small Cause Judge refused to recognize the authority of an advocate appearing on behalf of Ahmedabad Municipal Corporation in Tax Valuation Appeal No. 21324 of 1992 on the ground that the Commissioner of Ahmedabad Municipal Corporation had not validly delegated the powers to sign Vakalatnama as per sec. 69 of the Bombay Provincial Municipal Corporation Act, 1949. The fact further shows that the office order No. 3000 signed by Municipal Commissioner authorises Deputy Assessor and Tax Collector to sign Vakalatnama of municipal valuation appeal, but unfortunately through oversight the office order mentions that such delegation of powers are in exercise of powers vested in the Municipal Commissioner under sec. 68(2) of the BPMC Act, 1949. True, it is that the statute provides delegation of powers vide sec. 69 of the BPMC Act, 1949. Elaborating the above said ground, ld. judge vide order impugned which is dated 20.7.1994 refused to give audience to Mr. KL Thakar on behalf of Ahmedabad Municipal Corporation on the strength of the Vakalatnama ex. 10 placed on record of Tax Valuation Appeal and signed by the Deputy Assessor and Tax Collector in pursuance of the office order no. 3000.

Ld. advocate for the petitioner Mr. Bhagat makes a statement under instruction to him by Commissioner of Ahmedabad Municipal Corporation that mentioning of sec. 68(2) of the BPMC Act, 1949 in office order no. 3000 is merely a typographic error and in fact, the said powers were delegated vide above said office order only under sec. 69 of the BPMC Act. The statement of the ld. advocate is recorded.

While office order no. 3000 is required to be amended suitably, on the strength of the statement of ld. advocate, it is clear that on the technical ground on which the ld. judge refused to give audience to ld. advocate for Ahmedabad Municipal Corporation is clearly failure of justice. Ld. Small Cause Judge ought to have assessed the correct situation behind the delegation of powers by Commissioner of Ahmedabad Municipal Corporation to Deputy Assessor and Tax Officer and at least when the ld. advocate pleaded that there was typographic error in mentioning section of the BPMC Act, 1949 in office order no. 3000 it was the duty of the ld. Small Causes Judge to give an opportunity to Ahmedabad Municipal Corporation and its advocate to clarify, modify or correct the technicality instead of refusing advocate of Ahmedabad Municipal Corporation to hear on behalf of his client.

The order, therefore, is required to be set aside on this ground alone in this revisional jurisdiction and concerned ld. Small Cause Judge is directed to allow ld. Advocate Mr KL Thakar to represent the Ahmedabad Municipal Corporation in the said Tax Valuation Appeal on the strength of ex. 10 Vakalatnama. This revision application is allowed to the above said extent. Rule is made absolute to the above extent with no order as to costs.

(J.R. VORA, J.)

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